IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 931052
(S.C.C. Case No. INS 930072)

NATIONAL HOME INSURANCE COMPANY
(A Risk Retention Group),
Appellant,

v.

STATE CORPORATION COMMISSION,
Appellee.

PETITION FOR REHEARING OF APPELLEE STATE CORPORATION COMMISSION

Stewart E. Farrar
Solicitor General
Anthony Gambardella
General Counsel
Peter B. Smith
Senior Counsel
Michael D. Thomas
Assistant General Counsel
State Corporation Commission
Office of General Counsel
P. O. Box 1197
Richmond, Virginia 23209

Patrick H. Cantilo
Randolph N. Wisener
Steven E. Adkins
Cantilo, Maisel & Hubbard, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701

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The State Corporation Commission of the Commonwealth of Virginia respectfully submits this Petition for Rehearing in the above-referenced matter requesting reconsideration and withdrawal of this Court's Opinion of June 10, 1994 (the "Opinion").[1]

STATEMENT OF THE CASE

In National Home Insurance Co. v. State Corp. Commission, 838 F. Supp.1104 (E.D. Va. 1993) the United States District Court for the Eastern District of Virginia (the "District Court") abstained from deciding NHIC's challenge of an injunction entered against it by the Commission (the "Injunction"). While the District Court ruled that the Commission can be a court of competent jurisdiction under the federal statute at issue, it deferred to this Court for a determination of whether the Commission had properly entered the Injunction under the law of Virginia. On direct appeal from the Injunction, this Court in fact addressed the issue of "whether the State Corporation Commission is a court of competent jurisdiction within the meaning of the Federal Liability Risk Retention Act of 1986, 15 U.S.C. §§ 3901 through 3906" (the "Act"). Thus, this Court did not address the state law questions as to which the District Court had deferred to this Court, but instead, decided precisely the same federal question, involving the interpretation of a federal statute, that had been addressed and resolved previously by the District Court.

NHIC's first assignment of error, on which the Court decided this case, complained that the Commission lacked the jurisdiction required to enter an injunction against it because it is not a "court of competent jurisdiction" within the meaning of the Act in that it is not an "independent judicial officer." NHIC's contention, and therefore the Opinion, incorrectly presume that the

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[1] In this Petition, the parties will be referred to in the same manner as in the Court's Opinion of June 10, 1994. The facts, having been previously set forth in detail in the briefs filed with the Court, will not be repeated in this Petition.

phrase "court of competent jurisdiction" as used in the Act must be assigned a unique meaning which would establish extraordinary conditions not satisfied by the Commission when it issued the Injunction. Although the District Court had previously construed the Act as requiring a determination of whether a tribunal is a court of competent jurisdiction by reference to state law (National Home, 838 F. Supp. at 1114), this Court's Opinion ostensibly holds that such a determination should be made by reference to federal law. The District Court, construing the Act, concluded that no unique definition for the unambiguous phrase "court of competent jurisdiction" applies under the Act; that it should, therefore, be given its ordinary meaning; and, thus, that the Commission could be a court of competent jurisdiction under the Act.

NHIC might have asked this Court to decide whether, under the law of Virginia, the Commission had subject matter jurisdiction over the proceeding below or could enter the Injunction. Alternatively, it might have asked this Court to decide whether, in this case, the Commission had acted in its judicial capacity, as the District Court suggested. Instead, NHIC asked this Court to decide again precisely the same federal question that had been addressed and resolved by the District Court. The Commission respectfully submits that the Court decided a question that it need not have decided and that NHIC was estopped from presenting, and that it did so in a manner which does not comport with applicable law. Moreover, the Court's determination implicitly raises serious state law questions and may undermine substantially Virginia's ability to regulate effectively nondomiciliary risk retention groups doing business in the Commonwealth.

Finally, even if the phrase at issue could be given the arbitrary definition advocated by NHIC, that definition could not properly be construed as NHIC contends and, in any event, it would not preclude the Commission from fulfilling such a role. That is, the statute does not even remotely suggest by its express terms that the phrase "court of competent jurisdiction" requires an "independent judicial officer." Moreover, nowhere in the statute,

nor in the legislative history upon which NHIC and the majority of the Court have relied, is it suggested that such presumed requirement mandates some unique type of institutional separation or independence, beyond the independence which exists in fact between the Commission in its judicial capacity and its subordinate divisions, an independence previously recognized by this Court.

ARGUMENT AND AUTHORITIES

The heart of the issue before this Court is whether an extraordinary and particular meaning can be assigned to the phrase "court of competent jurisdiction" as used in the Act that would divest the Commission of authority to enjoin NHIC as contemplated by the Act. The Court should have answered this question in the negative because a statutory phrase cannot be given a particular meaning not expressly set forth in the statute unless the phrase is ambiguous in that it is capable of two or more ordinary but inconsistent definitions, and the meaning sought to be applied is one of those meanings. NHIC's position and the Court's Opinion are in error in that they apply to the phrase "court of competent jurisdiction" a meaning not expressly called for by the statute and which is not, under applicable authority, among the plain meanings ordinarily assigned to the phrase. Resort cannot be had to a statute's legislative history to create and then resolve an ambiguity. Further, NHIC has led this Court into substantial error, causing it to decide, *sub silentio*, constitutional issues[2] it need not have resolved in a manner substantially impairing the ability of the Commonwealth to regulate risk retention groups doing business within its jurisdiction. Finally, it is worth noting that NHIC is estopped from seeking this Court's redetermination of the issues resolved by the District Court, including that court's conclusion that the phrase was not ambiguous.[3]

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2 See U.S. Const. amend. X; Va. Const. art. IX, § 2.

3 Brief of Appellee, State Corporation Commission, filed January 11, 1994, ("Brief of Appellee") pages 12-16. While the Commission does not suggest that this Court is bound to follow the decision of the federal district court, that decision, even while on appeal, is certainly binding on NHIC under well-settled principles of collateral estoppel. See, e.g., Deposit Bank v.

I. The Phrase "Court Of Competent Jurisdiction" Is Not Ambiguous.

Even if NHIC were not collaterally estopped from asking this Court to interpret the phrase "court of competent jurisdiction", only two paths exist by which this Court may assign to a statutory phrase a particular meaning. The Court might find that, by its express terms, the statute manifests the intent of Congress to apply that particular meaning to that phrase. Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944). Alternatively, the Court could conclude that the phrase is ambiguous, in that it is susceptible of more than one ordinary definition, one being that particular meaning. Carpenter's Dist. Council v. Dillard Dept. Store, 15 F.3d 1275, 1283 (5th Cir. 1994). Only in the latter case could the Court then resort to a review of legislative history in an effort to ascertain which of the possible ordinary definitions (including the particular meaning) had been intended by Congress. Id. But if a particular meaning is not one commonly ascribed to the phrase, the Court may not then look to legislative history to ascertain whether it should be applied to the phrase at issue. To do so would be to hold that, in this instance, the phrase should be given an extraordinary meaning, something the Court cannot do unless the statute expressly so requires by its terms. See Federal Deposit Ins. Corp. v. Meyer, U.S. __, __, 114 S.Ct. 996, 1001 (1994). In the instant case, the Court accepted NHIC's proposition and held, without analysis and

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Frankfort, 191 U.S. 499 (1903); Blinder, Robinson & Co. v. S.E.C., 837 F.2d 1099, 1104 n.6 (D.C. Cir. 1988), cert. denied, 488 U.S. 869 (1988). It is well settled in Virginia that a state court must give a federal court decision the same preclusive effect it would be given under federal law, even if a different result would obtain under state law. Nottingham v. Weld, 237 Va. 416, 420, 377 S.E.2d 621, 623 (1989). Thus, NHIC may not relitigate the same issues here. For purposes of this proceeding, the phrase "court of competent jurisdiction" as used in the Act has been conclusively determined not to be ambiguous. Therefore, the question addressed by this Court was not properly before it and should not have been redetermined.

explanation, that (in the context of the Act) the phrase is ambiguous. The Court then defined it by reference to the Act's legislative history. This approach confuses ambiguity (the existence of two or more ordinary or established meanings) with the effort to impose a special meaning by resort to extrinsic evidence of presumed legislative intent, which is not a proper method of statutory interpretation.

It is axiomatic that courts should give statutory terms their established or plain and ordinary meaning unless it appears from the face of the statute that a different meaning was intended by the enacting legislative body. Park 'N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194 (1985); American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982).

This Court has noted that "[t]he Act does not define the phrase `court of competent jurisdiction.'" Precisely for that reason, the phrase must be given its ordinary meaning. See, e.g., Meyer, U.S. at _, 114 S.Ct. at 1001; Commonwealth v. Orange-Madison Cooperative Farm Svc., 220 Va. 655, 658-59, 261 S.E.2d 532, 533-34 (1980). Congress need not define each word in a piece of legislation to express its will clearly. Gardner v. Brown, 5 F.3d 1456, 1459 (Fed. Cir. 1993), cert. granted, __ U.S. __, 114 S.Ct. 1396 (1994). A phrase in the context of a statute is unambiguous where it has a clearly accepted meaning in both legislative and judicial practice, even though it is not explicitly defined by the statutory text. West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 98 (1991); see Marsh v. City of Richmond, 234 Va. 4, 11, 360 S.E.2d 163, 167 (1987). When a statute uses a term of art, courts are to presume that Congress intended it to have its established meaning. McDermott Int'l, Inc. v. Wilander, 498 U.S. 337, 342 (1991). It is indisputable that the Act does not on its face indicate in any manner whatsoever (i) that the phrase "court of competent jurisdiction" is to be given any meaning other than its established or plain and ordinary meaning, or (ii) that Congress intended the phrase to mean an "independent judicial officer".

The phrase's established or plain and ordinary meaning is a court that has subject-matter jurisdiction. United States v.

Morton, 467 U.S. 822, 828 & nn. 7-8 (1984)[4]; Tomai-Minogue v. State Farm Mut. Auto. Ins. Co., 770 F.2d 1228, 1242 (4th Cir. 1985) (Sprouse, J., dissenting). It is found in at least one hundred and ninety state appellate court decisions in Virginia. However, only in the case at bar has this Court found the phrase to mean something more than a court having subject-matter and/or personal jurisdiction. NHIC has not directed this Court's attention to any case in which the phrase "court of competent jurisdiction" was held to require anything different from, or any more than, subject-matter jurisdiction. Certainly, NHIC has offered no authority for the proposition that the phrase has ever been held to mean an independent judicial officer. When applied to the instant case, as it should have been, the established definition creates no ambiguity, leaving for determination by this Court only the question of whether, under the law of Virginia, the Commission was such a court. As will be seen, the authorities compel an affirmative answer to that question.[5]

II. This Court Should Not Have Considered The Legislative History Of The Act.

The door to a statute's legislative history can be opened only through a proper finding of ambiguity. That is, if a statute is not ambiguous, review of its history in an attempt to "interpret" it is inappropriate. West Virginia Univ. Hosps., Inc. v. Casey, 499

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[4] While in some cases, an issue may arise as to whether a court has personal jurisdiction in order to be a court of competent jurisdiction, such a question is not present in the case at bar. It is beyond question that the Commission possessed personal jurisdiction over NHIC.

[5] Generally, that determination turns on whether, under state law, the court has subject-matter jurisdiction. As will be seen, the Commission clearly does. If, on the other hand, NHIC's contention is that the Commission is not sufficiently a court to come within the scope of the phrase in the Act, that contention is also incorrect. As shown below, the Commission is most certainly a court.

U.S. 83, 98 (1991). On this well established point, we should be guided by the succinct admonition of Justice William R. Day:

> If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the Court to enter speculative fields in search of a different meaning. * * * In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.

Caminetti v. United States, 242 U.S. 470, 490 (1917). And it is clear that this is the law in Virginia. Recognizing this principle in an opinion authored by Justice Compton, this Court held: "[a]nd, when an enactment is unambiguous, extrinsic legislative history may not be used to create an ambiguity, and then remove it, where none otherwise exists." Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (citing Justice Stephenson's opinion in Cohan v. Thurston, 223 Va. 523, 525, 292 S.E.2d 45, 46 (1982)). Indeed, in an opinion authored by Chief Justice Carrico, the Court also held that "if statutory language is not ambiguous but has a usual and plain meaning, rules of construction do not apply and resort to legislative history is both unnecessary and improper." Marsh, 234 Va. at 11, 360 S.E.2d at 167. See this Court's decision written by Justice Hassell in Wilder v. Attorney General, 247 Va. 119, 124, 439 S.E.2d 398, 401 (1994).

Under these rules of statutory construction, this Court is bound by the plain, ordinary, and well-settled meaning of the phrase "court of competent jurisdiction." Despite NHIC's machinations, there is no evidence on the face of the statute that Congress, by this phrase, meant anything other than a court possessing subject-matter jurisdiction.[6] Review of the Act's

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[6] It is hardly open to question that the Commission is a court possessed of jurisdiction in the case at bar. See, e.g., Va. Const. art. IX, §§ 2, 3; Va. Code § 12.1-12; Va. Code § 38.2-5100 through 5115; Atlas Underwriters v. State Corp. Comm'n, 237 Va. 45, 47, 375 S.E.2d 733, 735 (1989); Winchester & S. R. Co. v. Commonwealth, 106 Va. 264, 270, 55 S.E. 692, 693 (1906).

legislative history in an attempt to assign a new or different interpretation to the phrase is inappropriate and contrary to well-settled state and federal law.

III. Congress May Not Direct The Commonwealth Of Virginia How To Constitute and Define Her State Courts, And The Act May Not Be So Interpreted.

The folly in this unorthodox quest for an unusual congressional intent not revealed by the face of the statute is demonstrated by its lamentable results. NHIC's contention, and the majority's opinion to the extent that it adopts this view, is tantamount to imputing to Congress a desire to dictate to Virginia how she may assign to her state courts jurisdiction over matters left to the Commonwealth. Congress did not, and constitutionally could not have, so intended.

Congress may certainly occupy and preempt certain areas of government, as permitted by the United States Constitution, or it may decline to do so, leaving the same to the states. However, once an area has been left to the states, Congress may not prescribe the manner in which the states may address them. To do so would be a fundamental and impermissible attack on the most basic tenets of our system of federalism. See Calder v. Bull, 3 U.S. 386 (1798). Under these well-settled principles, Congress may not dictate to the Commonwealth of Virginia, or any state, the requirements for a state court of competent jurisdiction. Id. When it passed the Act, Congress expressly provided that enforcement of certain of its provisions would require resort to state or federal courts. See 15 U.S.C. §§ 3902(a)(1)(H), 3902(e)-(h), 3903(g) and (h), and 3906. In those provisions, Congress properly imposed a requirement of judicial action for such enforcement. But it did not attempt, nor could it have sought, to specify which state courts could exercise that authority. Instead, those provisions simply make it clear that such enforcement must be by judicial proceedings, as distinguished from administrative or *ex parte* action of the Insurance Commissioner. Compare 15 U.S.C. §§ 3902(a)(1)(D)-(F), 3902(d), and 3903(c)-(e). But the question of whether the Commission may exercise the power left to the

states by the Act is one soluble only by reference to state law. See, e.g., Howlett v. Rose, 496 U.S. 356 (1990); Roudebush v. Hartke, 405 U.S. 15 (1972); Hill v. Martin, 296 U.S. 393 (1935). Accordingly, this Court must look to Virginia law to determine whether the Commission is a court of competent jurisdiction.[7]

NHIC's argument is not that the Commission has acted in an area left exclusively to the federal government. Rather, it suggests that the Commission has acted within an area expressly left to the states but in a manner that Congress did not permit. In other words, NHIC acknowledges that the Injunction issued against it could properly have been issued by some state court under the terms of the federal statute. But it suggests that, by ascribing a specific meaning to the phrase "court of competent jurisdiction," Congress has established criteria for what kind of state court may issue such injunction. This argument is constitutionally preposterous. Having in the first instance decided that state courts may issue injunctions within a particular area, Congress does not have the constitutional authority to prescribe the qualifications of such courts. See Gregory v. Ashcroft, __ U.S. __, __, 111 S.Ct. 2395, 2402 (1991). It may no more require that the court be an "independent judicial officer" than it may insist that it be comprised of three justices, or require that its judges all be younger than 45 years of age, or even more obviously, require that the members of the court all be from among the landed gentry. Indeed, once an area has been left to the states, it is exclusively up to the states to determine how to govern within it.

It is undoubtedly true that the states may not regulate or govern within an area left to them in a manner that violates the United States Constitution. However, it is well established, both under federal and Virginia law, that the Commission may constitutionally do what it has done in this case. See, e.g., Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908); Winchester & S. R. Co. v. Commonwealth, 106 Va. 264, 55 S.E. 692 (1906).

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[7] For a more expansive discussion of the Commission's powers as a court under Virginia law, please refer to Brief of Appellee at pages 17 through 21, and decisions cited therein.

Accordingly, once Congress has decided that the courts of the Commonwealth of Virginia may enjoin NHIC from issuing contracts of insurance within the Commonwealth while impaired, it is exclusively up to Virginia to legislate which of her courts may enter that injunction. She made that decision when the General Assembly assigned subject matter jurisdiction of such cases to the Commission.

IV. The Court's Opinion Has The Effect Of Vitiating Indirectly The Commission's Jurisdiction Though It Could Not Have Done So Directly.

Had the Court addressed squarely the question of whether the Commission is a court with subject-matter jurisdiction of the proceeding below, by its own decisions, it would have been compelled to conclude that it is. Instead, however, the Court has accepted NHIC's invitation to assign an arbitrary interpretation to an unambiguous phrase in a federal statute producing a conclusion that the Commission could not have heard the case below. In effect, then, the Court's opinion interprets a federal statute (in a manner not justified by its terms, and in the absence of ambiguity) so that it deprives the Commission of jurisdiction and judicial authority which is expressly granted by the Act to the Commonwealth, and by the law of the Commonwealth to the Commission.

That the Commission is a court which does, in fact, have jurisdiction over the proceeding below is undeniable. The Commission is vested with legislative, executive, and judicial powers, and is the conduit by which the Commonwealth exercises its police power to regulate various matters, including insurance. Va. Code § 12.1-12; see Winchester, 106 Va. at 207-08, 55 S.E. at 693. Analogous authority from this Court supports the principle that the Commission has exclusive subject matter jurisdiction over the regulation of risk retention groups doing business in Virginia pursuant to Title 38.2, Chapter 51, of the Virginia Code. See, e.g., Town of Culpeper v. Virginia Elec. & Power Co., 215 Va. 189, 192, 207 S.E.2d 864, 866 (1974); Winchester, 106 Va. at 270, 55

S.E. at 697. No other Virginia state court has been granted this authority.[8] If this Court's Opinion in the case at bar is left undisturbed, the natural and unavoidable result is that, unlike every other member of the Union, the Commonwealth of Virginia will be deprived of the ability to exercise fully that regulatory authority left to the states by Congress in the Act. Unlike the citizens of every other state, therefore, the citizens of this Commonwealth will not have the ability to rely on their own state courts for the enforcement of laws enacted for their protection regarding risk retention groups chartered in other jurisdictions. The citizens of the Commonwealth will be relegated to reliance exclusively on the federal courts or on other states' courts.

This Court's Opinion would not only overrule its own well-established jurisprudence but also would substantially rewrite the relevant Virginia Constitution and Virginia Code provisions which grant the Commission jurisdiction in matters such as this one. See, e.g., Virginia Const. art. IX, § 2, Va. Code §§ 12.1-12, 38.2-5110.

This unfortunate dilemma is precipitated by this Court's acceptance of NHIC's invitation that it decide a federal question consisting, in the first instance, of the interpretation of an unambiguous federal statute and, ultimately, of the implicit decision of a Virginia state law question. The Court need have done none of these. It would have sufficed for the Court to resolve the much narrower question of whether the Virginia General Assembly has assigned judicial authority and subject-matter jurisdiction with respect to the enforcement of Virginia's regulatory scheme for risk retention groups chartered in other states to the Commission. That is the question posed by the phrase "court of competent jurisdiction" as used in the Act. Under

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[8] NHIC's reliance on Virginia Code § 12.1-38 is misplaced. This section grants concurrent jurisdiction to the Commission and other courts only "to hear, determine and enforce ... fines and penalties." Neither a fine nor a penalty is in question in the case at bar.

applicable Virginia law, it is clear that this question must be answered in the affirmative.

V. The Commission Meets Any Requirement Of Independence Which Reasonably May Be Read Into The Act.

Finally, the analysis of whether the Commission is the kind of court presumed to be required by the Act has been applied incorrectly. Assuming, *arguendo*, that there were some extraordinary and special requirement of independence for "courts of competent jurisdiction" under the Act, it does not follow that the Commission fails to satisfy such a requirement.

NHIC's position consists of two equally fallacious premises. The first is that the phrase "independent judicial officer" must necessarily mean institutional separation. The second is that the Commission is not in fact institutionally separate from the Bureau.

Even if it were appropriate for this Court to engage in the review of the Act's legislative history sought by NHIC, it could not find within those sources any indication that, by the passing and unexplained reference of two of its members to "independent judicial officer",[9] Congress intended to dictate to Virginia what institutional relationship may or may not exist between her courts and regulatory agencies. Indeed, a review of the Act's legislative history compels the conclusion that what was really at stake was the allocation of functions as between the insurance regulators and the courts. No reference is made, directly or indirectly, to the

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[9] The phrase "independent judicial officer" does not appear anywhere in the Act. Indeed, NHIC has not even demonstrated that it ever found its way into any draft of the Act. Rather, NHIC leads this Court to rely heavily, even exclusively, and improperly on the comments of two members of Congress. See Peery v. Virginia Board of Funeral Directors and Embalmers, 203 Va. 161, 165, 123 S.E.2d 94, 97 (1961).

institutional relationship between such courts and the regulator.[10] Given that the hearing resulting in the Injunction was conducted by the Commission sitting as a court, and not by the Commissioner of Insurance as an administrative or *ex parte* proceeding, whatever requirement of independence can be gleaned from a review of the legislative history is clearly satisfied.

However, in the Opinion, this Court said that:

> [i]n contrast to the constitutional and statutory framework in which proceedings under state law are conducted and decided, we believe that, in drafting the Act, Congress intended that there be an institutional separation between the ... commissioner and the decisional body considering the ... request for an injunction.

Thus, this Court has adopted NHIC's unfounded assertions that Congress has imposed specific requirements governing what type of state court may issue those injunctions which the Act authorizes. Such analysis runs counter to well-established law.

Even if this Court were to accept all of NHIC's premises, it still should not have reached the conclusion advocated by NHIC. In fact, the Bureau of Insurance is sufficiently distinct and separate from the Commission sitting as a court. This Court has observed that the Commission is independent of its employees and has held that the Commission is not bound by the recommendations of its staff. See, e.g., Roanoke Gas Co. v. Division of Consumer Counsel, 219 Va. 1072, 1079, 254 S.E.2d 102, 106 (1979).

In its Opinion, the Court noted that the Commissioner of Insurance is an employee of the Commission, that the Bureau, a division of the Commission, sought the Injunction, that the hearing was conducted by the Commission, and that the Commission's

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[10] In fact, "independent" judicial officer simply means (i) an officer who is different and superior to the Bureau of Insurance, and (ii) which exercises "judicial" authority. The Commission is clearly both.

counsel participated in the hearing. However, none of these facts has ever been found to be a defect by this Court. This Court's consideration of alleged due process violations in Hladys v. Commonwealth, 235 Va. 145, 366 S.E.2d 98 (1988) is especially instructive on this point. There, this Court considered a matter "[i]n which a single state agency had investigated, prosecuted, and decided a case." Id. at 147-48, 366 S.E.2d at 100. Similar to NHIC's assertions here, it was argued in Hladys that the proceedings "[w]ere structurally flawed by the decision-maker's institutional connection with the investigating agency and its chief witness." Id. This Court held that "[i]n the absence of a showing of bias or improper conduct, we do not agree." Id. The Court further reasoned that "[s]tate administrators are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." Id. The Commission is certainly entitled to the deference accorded by this Court in Hladys. See Atlas Underwriters, Ltd. v. State Corp. Comm'n, 237 Va. 45, 47, 375 S.E.2d 733, 734 (1989).

NHIC has not shown (indeed, cannot show) any impropriety or bias on the part of the Commission in the case at bar. Accordingly, this Court must find that the Commission meets any independence requirement necessary under the Act.

CONCLUSION

Accepting NHIC's suggestion, this Court has interpreted an unambiguous federal statutory phrase in an extraordinary and unjustified sense that results in an unintended establishment by Congress of the characteristics required for Virginia's state courts. The Commonwealth's citizens have thereby been deprived of a state remedy available to the citizens of all other states. For the reasons stated herein, the Commission respectfully requests that this Honorable Court grant this Petition for Rehearing and withdraw its decision of June 10, 1994, in this matter.

Respectfully submitted,

STATE CORPORATION COMMISSION

By: _____
Counsel

Patrick H. Cantilo
Randolph N. Wisener
Steven E. Adkins
Cantilo, Maisel & Hubbard, L.L.P.
111 Congress Ave., Suite 1700
Austin, Texas 78701

Stewart E. Farrar
Solicitor General
Anthony Gambardella
General Counsel
Peter B. Smith
Senior Counsel
Michael D. Thomas
Assistant General Counsel
State Corporation Commission
Office of General Counsel
P. O. Box 1197
Richmond, Virginia 23209

Dated: July 11, 1994

CERTIFICATE OF SERVICE

In accordance with the Rules of the Supreme Court of Virginia, I certify that a true copy of the foregoing Petition for Rehearing was mailed, postage prepaid, on July 11, 1994, to Harvey B. Cohen, Esquire, Cohen, Gettings, Dunham & Harrison, P. C., 2200 Wilson Boulevard, Suite 800, Arlington, Virginia 22201, counsel for National Home Insurance Company.